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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Conservatorship of the Person and Estate of EVELYN DOLORES STRACZYNSKI.	
CHARLES STRACZYNSKI, Appellant. v. BORIS SIEGEL, as Guardian ad litem, etc., Respondent,	D052288 (Super. Ct. No. P189683)

APPEAL from an order of the Superior Court of San Diego County, William H. Kronberger, Judge. Affirmed.

Charles Straczynski (Charles) appeals from a court order in a conservatorship proceeding pertaining to his spouse, conservatee Evelyn Straczynski (Evelyn). In the challenged order, the court upheld its prior appointment of Boris Siegel as guardian ad litem for Evelyn, and found no conflicts of interest requiring Siegel's removal.

We affirm. Charles has no standing to appeal because his legal rights were not adversely affected by the challenged order, and he did not bring a motion to remove or disqualify Siegel. Additionally, even if Charles had standing to appeal, his appellate contentions are without merit. The order was supported by the evidence, and there was no abuse of discretion.

FACTUAL AND PROCEDURAL SUMMARY

Under applicable appellate rules, we summarize the relevant facts in the light most favorable to the court's order. (See *Conservatorship of Walker* (1989) 206 Cal.App.3d 1572, 1577.)

Evelyn and Charles were married in April 1950, and separated 55 years later in June 2005. In August 2005, Evelyn filed for dissolution. She was represented by counsel Kelly Shaffer. Evelyn suffered from progressive dementia, but the family court rejected Charles's arguments that Evelyn was not competent to file the dissolution petition. Charles petitioned for a writ of mandate seeking to challenge the ruling, and this court denied the writ petition.

Charles then petitioned for the appointment of a conservator for Evelyn, stating she has been diagnosed with dementia, and has increasing mental problems and suffers from delusions. Charles requested that he be appointed the conservator. The court initially appointed Sarah Wellington as counsel for Evelyn in the conservatorship proceedings, but in June 2006 the court replaced Wellington with Boris Siegel, a certified specialist in probate and trust and estates law.

Evelyn then brought a voluntary petition for appointment of professional fiduciary Julie Lubitz as conservator. The petition stated Evelyn needed help with daily living activities and financial affairs, and she wanted a third party professional conservator because of strife within the family. (See Prob. Code, § 1800, et seq.) Charles objected to Lubitz's appointment because of his concerns that Lubitz had prior professional relationships with attorney Siegel and with Evelyn's dissolution counsel (Shaffer). After negotiations, Charles agreed to the appointment of a different professional fiduciary, Teresa Castiglione, as Evelyn's conservator.

Based on the parties' agreement, the court appointed Castiglione as conservator in September 2006. However, two months later, Charles petitioned for removal of Castiglione as conservator, stating that Castiglione failed to disclose she is a judgment debtor and had filed personal bankruptcy in 2000. Siegel, on Evelyn's behalf, opposed the petition, stating that Charles had stipulated to Castiglione's appointment, and he should not be allowed to change his mind. Siegel also asserted there were no grounds for Castiglione's removal.

In May 2007, Castiglione placed Evelyn into Ambassador Senior Retreat (Ambassador), a small board and care facility that provides personalized service. The exit doors at the Ambassador are locked and have alarms to prevent wandering.

The next month, the court found Evelyn was no longer competent to be in an attorney-client relationship, and appointed Siegel to serve as guardian ad litem for Evelyn, rather than as her counsel. This appointment was based on *Charles's* petition requesting that Siegel be appointed as guardian ad litem.

Two months later, in August 2007, the court replaced Castiglione with Lubitz as successor conservator. This appointment arose from a negotiated settlement between the parties, including Charles, in which Castiglione agreed to resign upon Lubitz's appointment.

Shortly after, Lubitz found Evelyn's placement at Ambassador had never been approved by a court, as is required by law (Health & Saf. Code, § 1569.698). Thus, within two weeks of her appointment, Lubitz petitioned the court for retroactive approval of the placement. Lubitz said the Ambassador was a "good home" for Evelyn, and the "least restrictive placement appropriate for her needs." Evelyn's daughter, Lorraine, opposed this petition.[1]

Lubitz also filed a petition for court authority to pay divorce counsel fees from the conservatorship estate. Although she was not required to obtain prior approval to pay this expense, Lubitz wanted court approval because of the highly adversarial nature of the dissolution proceedings. Charles objected to this petition.

Siegel (as guardian ad litem) filed a report supporting Lubitz's petition to pay fees to Evelyn's dissolution counsel, stating this request was in Evelyn's best interests. Siegel noted that Charles had indicated he did not want to provide any further monetary support for Evelyn, and this position was contrary to Family Court orders and Charles's own attorney's representations.

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1 Lorraine's full name is Evelyn Lorraine Straczynski. To avoid confusion we refer to this daughter by her middle name.

On October 11, the court held an evidentiary hearing on Lorraine's challenge to Lubitz's petition that Evelyn be placed in the secure facility. After the evidence was presented, the court ruled that clear and convincing evidence established Ambassador was the least restrictive appropriate placement for Evelyn and authorized Lubitz to continue her placement at that facility.

At the end of the hearing, Lorraine (who was not represented by counsel) raised a separate issue, stating she would "like to offer into evidence" materials showing that Siegel had a prior relationship with Lubitz. The court responded by noting the local rule requiring disclosure of certain relationships in conservatorship proceedings (Superior Ct. San Diego County, Local Rules, rule 4.21.7[2] (Rule 4.21.7)), and asked Siegel's counsel whether Siegel had complied. Siegel's counsel stated that Siegel currently and previously had represented Lubitz in her professional capacity as a fiduciary, and that he believed the relationship had been disclosed, but asked for time to review the file for confirming

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2 Rule 4.21.7 provides in relevant part: "Conservatees . . . are generally not in a position to give their informed consent to representation by attorneys, or the appointment of a Conservator and/or Guardian. To avoid the appearance of a conflict of interest in duty, a Conservator, proposed Conservator, Guardian, proposed Guardian, and/or attorney who appears in matters involving a Conservatee, Ward, or their estate, must disclose all present and past relationships to the Court at their earliest opportunity in the following circumstances: [¶] **A. Conservators.** A person who is or has served in the past as a Conservator of the individual or estate which is the subject of the pending proceeding . . . must disclose all present and past relationships. [¶] **B. Attorneys. 1.** An attorney for a Conservatee or proposed Conservatee, or a Conservator or proposed Conservator, must disclose all present or past attorney-client relationships with any other person appearing in the matter. [¶] . . . **C. Guardians.** A person who is or has served in the past as a Guardian of the individual or estate which is the subject of the pending proceeding (Conservatorship, Trust, or Decedent's Estate) must disclose all present and past relationships."

information. The court emphasized the importance of the local rule's disclosure requirements, and in an attempt to obtain all relevant information and ensure compliance with Rule 4.21.7, the court stated it would take the matter under submission and permit all parties to submit briefs on the issue.

Three parties submitted responsive papers on the conflicts issue: Charles, Siegel, and Lubitz.

Charles filed his declaration in which he requested the court to remove Siegel as guardian ad litem. As the sole basis for this request, Charles claimed that Siegel never disclosed his relationship with Lubitz to any party. Charles acknowledged the "conflict" would "technically end[ ]" with Lubitz's intended resignation, but argued (without explanation) that continuing Siegel as guardian ad litem "is very much like the fox guarding the henhouse."

In his filings, Siegel offered his resignation, stating the court should accept the resignation if it had "the slightest qualm regarding me continuing to serve . . . ." But Siegel argued there was no legal or ethical ground for his removal because Rule 4.21.7 did not apply to a guardian ad litem and there were no conflicts created by the representation. Siegel also stated that even if the local rule requiring disclosure applies in this situation, he did not violate this rule because he made full disclosures about his professional relationships to Evelyn (when she was still competent) and to Charles and Lorraine. Siegel detailed his previous conversations with attorneys for Charles and Lorraine, in which he made clear to them that he was "very familiar" with Lubitz's excellent work as a conservator because he had represented her in many other cases.

Siegel said that Charles's attorney had responded that based on this information "he believed he could persuade Charles . . . to not raise any objections to the appointment of . . . Lubitz." Thereafter, the court appointed Lubitz as successor conservator based on an agreement by all the parties, including Charles.

Based on these facts, Siegel argued he had fully disclosed the prior relationship to the objecting parties and to the court at the earliest opportunity, but Charles was now asserting the relationship as a basis for removing Siegel because of Siegel's unwillingness to "'rubber stamp'" Charles's actions that were not in Evelyn's best interests. Siegel said that Charles no longer wanted him to serve because Siegel would not "tolerate" Charles's "flagrant disregard of the Family Court's support order for which he is now more than $48,000 in arrears."

In her papers, Lubitz asserted that "Siegel has . . . a unique knowledge of [Evelyn's] circumstances and it would be difficult, if not impossible, to find a *guardian ad litem* better equipped to promote her best interests." Lubitz also stated the issue was moot because she had now petitioned to resign as conservator based on the highly adversarial nature of the conservatorship.

At the November 16 hearing the court stated: "I want to make it clear that I asked for this hearing . . . because it was brought to my attention that Mr. Siegel served as counsel of record for Miss Lubitz. I didn't bring this at the behest . . . of either [Lorraine's or Charles's attorney]. I brought it . . . of my own volition and my own motion, so that I could assure myself one way or another that the best interests of the conservatee were being served and were being protected. . . ." After considering the parties' submissions

and counsels' arguments, the court said it was convinced "there was full disclosure to all parties of Mr. Siegel's pre-existing relationships with Ms. Lubitz. I don't think there was a failure to disclose at all . . . . I think everybody was above board. . . ." The court also found there was no actual conflict of interest in Siegel's prior representation, and that Siegel has always advocated in the "best interests of the conservatee." The court noted the only possible future conflict would be if the guardian ad litem was asked to review the conservator's fee request, but said the best way to address this potential conflict was to appoint an independent guardian to perform this limited task.

After the hearing, the court issued a written order (the November 16 order) approving Siegel's continued status as guardian ad litem. The order stated in part:

> "There was full disclosure to all parties of Boris Siegel's pre-existing professional relationship with Julie Lubitz. [¶] To date, there has been no actual conflicts of interest caused by Boris Siegel's pre-existing professional relationship with Julie Lubitz. [¶] Boris Siegel has not done anything other than advocate, from his perspective, the best interests of the conservatee.
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> ". . . Rule 4.21.7(B) and Rules of Professional Conduct, Rule 3-310, each do not apply to guardian ad litems. However, even if they did apply, their application would be moot given the finding that Boris Siegel did fully disclose his professional relationship with Julie Lubitz to all parties previously. . . .
>
> [¶] . . . [¶]
>
> "The petitions previously before this Court have not been affected by Boris Siegel's professional relationship with Julie Lubitz because those petitions did not involve the conduct of Julie Lubitz; they involved the conduct of other persons. . . .
>
> [¶] . . . [¶]

> "The potential for a conflict of interest as a result of the professional relationship between Boris Siegel and Julie Lubitz exists in the context of future accountings and fee requests to be filed by Julie Lubitz. Upon the filing of such petitions by Julie Lubitz, the proper course would be to appoint another guardian ad litem for those specific petitions to avoid any appearance of impropriety.
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> "Boris Siegel has properly and adequately discharged his duties and obligations as guardian ad litem in this conservatorship. The Court does not find any fault or see anything that Boris Siegel has done in error. He has advocated to protect the interests of the conservatee. There is no real or apparent conflict of interest relating to his previous participation.
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> "Boris Siegel has gained a great deal of knowledge and information about this conservatorship. To accept his resignation would deprive the conservatee of that knowledge base. [¶] The conservatee chose Boris Siegel as counsel at the time when she was capable of making her own choices. The Court does not take that lightly.
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> "There are no grounds for 'removal' of Boris Siegel. This is not a removal motion. [¶] There is no reason for the Court to accept Boris Siegel's resignation because he, as guardian ad litem, has a different opinion than Charles Straczynski and other family members in the litigation between the conservatee and Charles Straczynski."

DISCUSSION

On appeal, Charles challenges the November 16 order, contending the court erred in refusing to remove Siegel as Evelyn's guardian ad litem, and/or refusing to accept Siegel's resignation, because of a conflict of interest. In response, Siegel contends: (1) the order is not appealable; (2) Charles has no standing to appeal the order; and (3) the court order was proper. We conclude the November 16 order is an appealable order, but that Charles has no standing to appeal. Alternatively, we determine Charles's challenges to the order are without merit.

I. *Appealability*

Rulings in conservatorship proceedings are not appealable unless expressly made appealable by statute. (*Conservatorship of Rich* (1996) 46 Cal.App.4th 1233, 1235; see 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 152, p. 229.) Probate Code section 1300 identifies specific orders that are appealable. One of those orders is an order "[a]uthorizing, instructing, or directing a fiduciary, or approving or confirming the acts of a fiduciary." (Prob. Code, § 1300, subd. (c).)

The November 16 order falls within this category. A guardian ad litem for a conservatee is a fiduciary (Prob. Code, § 39), and in the November 16 order the court *approved* and *confirmed* the acts of the guardian ad litem and rejected arguments that the guardian must be removed because of a conflict of interest.

II. *Standing*

Even if an order is appealable, a party must have standing to appeal. (Code Civ. Proc., § 902; *Serrano v. Stefan Merli Plastering Co., Inc.* (2008) 162 Cal.App.4th 1014, 1026-1027 (*Serrano*).) To meet the standing requirement, a party must be "legally aggrieved" by the appealable order. (*In re Jasmine S.* (2007) 153 Cal.App.4th 835, 841-842.) A party is legally aggrieved for appeal purposes only if his or her rights or interests are "injuriously affected" by the judgment. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737; *Crook v. Contreras* (2002) 95 Cal.App.4th 1194, 1201.) The rights or interests "injuriously affected" must be "'"immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment."'" (*County of Alameda v. Carleson, supra,* 5 Cal.3d at p. 737; *Howard Contracting, Inc. v. G.A. MacDonald Constr. Co., Inc.*

(1998) 71 Cal.App.4th 38, 58.) And the rights must be "'recognizable by law.'" (*In re Pacific Standard Life Ins. Co.* (1992) 9 Cal.App.4th 1197, 1201, italics omitted.)

Charles was not "injuriously affected" by the challenged order because the claimed conflict did not affect his legal rights. Generally, standing to challenge an alleged conflict must arise from a breach of duty owed to the complaining party. (See *DCH Health Services Corp. v. Waite* (2002) 95 Cal.App.4th 829, 832.) A guardian ad litem is a party's representative and an officer of the court, and owes a duty of loyalty to the incompetent person, and not to other parties interested in the litigation. (See *Williams v. Superior Court* (2007) 147 Cal.App.4th 36, 47; *In re Christina B.* (1993) 19 Cal.App.4th 1441, 1453.) The guardian's duty is to protect the rights of the incompetent person and represent her interests. (See *In re Christina B., supra*, 19 Cal.App.4th at pp. 1452-1453.)

Under these principles, Siegel did not owe a duty of loyalty to Charles, and the asserted conflict did not affect Charles's legitimate interests. Without some showing that *his* personal rights are affected, Charles had no standing. (See *In re D.S.* (2007) 156 Cal.App.4th 671, 674.)

The cases relied upon by Charles are factually distinguishable. For example, in *In re Marriage of Justice* (1984) 157 Cal.App.3d 82, the court issued a postjudgment order requiring a city pension board to pay a wife a portion of the husband's pension. The court held that the husband had standing to appeal this order because his monetary rights to the full pension were "injuriously affected by the order in an immediate, pecuniary and substantial manner." (*Id.* at p. 86, fn. 4.) Similarly in *In re Marriage of Acosta* (1977) 67 Cal.App.3d 899, the court found the husband had standing to appeal an order that

modified the amount he was required to pay for spousal support. (*Id*. at p. 901, fn. 1.) The challenged order here had no similar effect on Charles's personal interests.

Moreover, in this case, not only did the guardian ad litem not owe a duty of loyalty to Charles, the guardian owed a duty to protect Evelyn *from* Charles's actions. The facts before the court showed Charles was a party whose interests were opposed to the interests of the conservatee. Charles was involved in a highly contentious dissolution proceeding with Evelyn, and Charles was refusing to comply with family court orders requiring him to pay for Evelyn's expenses. Siegel had raised this issue before the probate court to assist Evelyn obtain sufficient funds for her needs.

Under these circumstances, the fact that Charles was Evelyn's spouse did not give him the right to raise her interests on appeal. A party's guardian ad litem has no duty of loyalty or confidentiality towards a spouse with whom the party stands in an adversarial legal relationship. The fact that a guardian ad litem takes positions on matters that *affect* the conservatee's spouse does not necessarily confer standing on the spouse. Charles must show the alleged conflict has an immediate and direct effect on *his* legal interests, or that his rights are so aligned with his spouse that he is entitled to assert her rights. Neither of these factors was present here. The right to a conservator and a guardian ad litem free from conflict belongs to the conservatee, and not to a party who stands in opposition to the conservatee.

Charles argues he has standing to challenge the order based on a rule that a nonclient litigant has standing to move for disqualification of opposing counsel if the claimed "'ethical breach so infects the litigation . . . that it impacts the moving party's

interest in a just and lawful determination of her claims.'" (*Concat LP v. Unilever, PLC* (N.D. Cal. 2004) 350 F.Supp.2d 796, 818.) This exception is not applicable here. The rule involves disqualification of counsel, not a guardian ad litem. Contrary to Charles's arguments on appeal, Siegel was no longer counsel for Evelyn. The order appointing Siegel guardian ad litem was intended to terminate the attorney-client relationship. To the extent this termination had not been reflected in the court's written minutes, the court clearly intended to relieve Siegel as counsel since it made a finding Evelyn was no longer competent to be in an attorney-client relationship. Additionally, the claimed conflict did not prevent "a just and lawful determination" of claims asserted in the proceeding. Lubitz and Siegel were each representing and protecting Evelyn's identical interests, and the issue whether they properly disclosed their prior professional relationship did not "so infect" the proceedings to preclude the court from fairly ruling on Charles's competing claims.

Charles also does not have appellate standing because he never moved to disqualify Siegel. To establish appellate standing to challenge a court order, the party must have filed his or her own motion and show the motion was denied (in whole or in part). (See *Decker v. U.D. Registry, Inc.* (2003) 105 Cal.App.4th 1382, 1390-1391.) In this case, Charles did not bring a motion to remove or disqualify Siegel. Charles was permitted only to provide argument on an issue that had been raised by the court. This filing did not give him standing to challenge the court's order. (*Ibid.*)

III. *Order Proper on its Merits*

Even if Charles had standing to challenge the court's order, we have reviewed the entire record and determined the court did not err in reaching its factual and legal conclusions. The court specifically found: (1) Siegel "fully disclose[d]" his pre-existing professional relationship with Lubitz; (2) there has been no "actual conflict of interest" caused by the professional relationship, including Siegel's role in representing Evelyn in matters involving family disputes; (3) Siegel properly and adequately discharged his duties and obligations as guardian ad litem in the conservatorship; and (4) "Siegel has gained a great deal of knowledge and information about this conservatorship [and therefore] . . . [t]o accept his resignation would deprive the conservatee of that knowledge base."

These factual findings are fully supported by the evidentiary record, and they justify the court's decision that there was no ground for removing Siegel or accepting his resignation. The court found one potential future conflict (the conservator's fee requests) and adequately addressed this potential conflict by stating it would appoint an independent guardian to review those requests. This ruling was within the court's broad discretion.

In reaching our conclusions, we commend the court for exploring the issue of potential conflicts when it first learned Siegel had represented the conservator in her professional capacity in other actions. Mindful of its obligation to ensure the integrity of the conservatorship proceedings, the court raised the potential applicability of Rule 4.21.7 on its own motion and asked for briefing on the subject, and allowed every party

(including Charles) to provide relevant information on the subject. The court's extensive oral and written comments make clear that the court properly and completely considered the issue, and was correct in finding no basis to remove Siegel. Charles's challenges to the court's ruling border on the frivolous.[3]

DISPOSITION

Order affirmed. Appellant to bear respondents' costs on appeal.

HALLER, J.

WE CONCUR:

NARES, Acting P.J.

MCINTYRE, J.

[3] Although we do not consider awarding sanctions for a frivolous appeal because respondents did not request sanctions, we caution Charles Straczynski and his counsel to carefully consider appellate rules and applicable law before filing an appeal.